REMARKS

Further and favorable reconsideration is respectfully requested in view of the foregoing amendments and following remarks.

Amendments to the Claims

Claims 36 and 53 have been amended to recite that the temperature is set to $10^{\circ}C \leqq x \leqq 50^{\circ}C$. Support for these amendments is found in claim 39. Additionally, the claims have been amended to recite a method for precluding elution of nickel salt, and to make editorial changes to the claims. No new matter has been added to the claims by these amendments.

Patentability Arguments

The patentability of the present invention over the disclosures of the references relied upon by the Examiner in rejecting the claims will be apparent upon consideration of the following remarks.

Rejection Under 35 U.S.C. § 103(a)

Thus, the rejection of claims 36, 37, 39, 40, 49-52 and 64 under 35 U.S.C. §103(a) as being unpatentable over EP 0892084 (EP '084) in combination with JP 2002-155391 (JP '391) is respectfully traversed.

The Examiner takes the position that EP '084 discloses a method for preventing contamination by lead from a piping device made of a lead-containing copper alloy, wherein the method comprises contacting the surface with a cleaning fluid comprising nitric acid and hydrochloric acid. The Examiner admits that EP '084 fails to teach removing both lead and nickel, or nickel alone, the temperature, the ratio between the temperature and the time, the plating, and the hot water washing.

The Examiner further asserts that JP '391 discloses treating water feed appliances by applying nickel plating to the water feed appliances, and removing the nickel by using nitric acid.

The Examiner takes the position that it would have been obvious to one of ordinary skill in the art to use the process taught by EP '084 to treat the nickel, because JP '391 disclose using nitric acid for treating the nickel from a water supply instrument made from a copper alloy.

The Examiner states that one skilled in the art would control the temperature, concentration and time to improve the treating process. However, Applicants respectfully disagree. Assuming *arguendo* that the Examiner's above statement is accurate, at best, one would alter the conditions to maximize prevention of lead contamination. There is absolutely no reason one might alter the conditions to effectively remove nickel salt (as recited in Applicants' claims), because EP '084 does not teach, or even mention the presence of nickel salt. Any assertion that one would make these changes can only be based on hindsight, after reading the teachings of Applicants' disclosure. As stated by the Supreme Court in KSR International Co. v. Teleflex Inc., "the factfinder should be aware, of course, of the distortion caused by hindsight bias and must be cautious of arguments reliant upon *ex post* reasoning." (See KSR International Co. v. Teleflex Inc., 237 S. Ct. 1727 (U.S. 2007), referring to Graham v. John Deere Co. of Kansas City, 86 S. Ct. 684, which warned against a "temptation to read into the prior art the teachings of the invention in issue" and instructing courts to "guard against slipping into the use of hindsight".

In the instant situation, neither the primary nor secondary reference teach or suggest the presence of nickel salt. Therefore, asserting that one of ordinary skill in the art would control the conditions of the process to improve the process can not be interpreted to mean that one would alter the conditions to improve the removal of nickel salt. This assertion could only be based on the teachings of Applicants' disclosure, which indicate the discovery of nickel salt on the liquid contacting surface of the plumbing device.

Furthermore, it is unclear as to what is meant by "improve the treating process". EP '084 is merely directed to a method for preventing contamination by lead. Thus, any improvement of the treating process of EP '084 would be intended to improve the prevention of lead contamination. There is no reason one of ordinary skill in the art

would read the teachings of EP '084 and alter the conditions in order to remove nickel salt. As discussed above, any assertion that "improving" the process of EP '084 to include the removal of nickel salt could only be based on hindsight, which is impermissible.

Further, the Examiner has taken the position that it would be obvious to use the process taught by EP '084 to remove the nickel residue while removing the lead, because JP '391 discloses using nitric acid for treating the nickel from water supply instrument made from a copper alloy. However, neither EP '084 nor JP '391 teach or suggest the effective removal of nickel salt. Although the Examiner asserts that the copper alloy of EP '084 inherently contains nickel and nickel salt, this statement is unsupported and untenable. The Examiner specifically points to page 8, lines 39, 42, 48 and 54 of EP '084. However, these passages do not teach or suggest the presence of nickel salt.

Thus, even assuming *arguendo* that one would combine the teachings of EP '084 and JP '391, this combination would not teach or suggest the effective removal of nickel salt, as required by Applicants' amended claims.

Additionally, as discussed in the Amendment After Final Rejection, filed April 24, 2007, and shown in Attachment A enclosed with the Amendment After Final Rejection, treatments based on the teachings of JP '391 do not result in thorough removal of plated nickel. For example, see photographs 2 and 4 of Attachment A. Further, it is again noted that JP '391 addresses removing nickel plating which has protruded from chrome plating, and does not even mention the removal of nickel salt.

Furthermore, the cited references do not even acknowledge the problem which is solved by Applicants' claimed method. Specifically, on page 28 of Applicants' specification, it is stated that "[t]he inner surface of the plumbing decide (the surface of the liquid-contacting part) has been considered to have no presence of nickel because it is not opposed to the electrode and, therefore, is not caused to form a plated layer. Actually, however, the presence of a nickel component on the inner surface has been confirmed in consequence of the analysis by the use of the EPMA (X-ray microanalyzer) . . . it has been elucidated that this nickel is not metallic nickel originating in the plating treatment but has occurred when the nickel salt component in the plating fluid persists

inside the plumbing device even after the plating step, dries, and adheres to the inner surface of the plumbing device." (See page 28, lines 16-27 of Applicants' specification.)

Thus, Applicants discovered the presence of nickel salt on the inner surface of the plumbing device, and have solved the problem by the claimed method. Neither reference, nor a combination thereof, acknowledges this problem, and therefore cannot teach or suggest the method of solving this problem.

For these reasons, the invention of claims 36, 37, 39, 40, 49-52 and 64 is clearly patentable over EP '084 in view of JP '391.

Rejection Under 35 U.S.C. § 102(b)

The rejection of claims 53 and 59-63 under 35 U.S.C. § 102(b) as being anticipated by EP '084 is respectfully traversed.

The Examiner takes the position that EP '084 discloses a plumbing device made of copper alloy containing both lead and nickel, that include a valve and tube coupling as claimed.

However, as discussed in detail above, EP '084 does not teach (or suggest) a plumbing device made of a copper alloy containing nickel salt. The Examiner makes the unsupported assertion that EP '084 teaches the presence of nickel salt, but this statement is inaccurate.

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). For the above reason, EP '084 fails to teach each and every limitation of Applicants' claims, and therefore is not anticipatory.

For these reasons, the invention of claims 53 and 59-63 is clearly patentable over the cited reference.

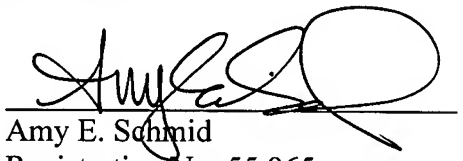
Conclusion

Therefore, in view of the above amendments and remarks, it is submitted that each of the grounds of rejection set forth by the Examiner has been overcome, and that the application is in condition for allowance. Such allowance is solicited.

If, after reviewing this response, the Examiner feels there are any issues remaining which must be resolved before the application can be passed to issue, the Examiner is respectfully requested to contact the undersigned by telephone in order to resolve such issues.

Respectfully submitted,

Norikazu SUGAYA

By: 

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